

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Boston Properties, Inc.

Complainant,

vs.

Pacific Gas and Electric Company,

Defendant.

Case 00-05-039
(Filed May 22, 2000)

**JOINT RULING ON SCOPE OF PROCEEDING
AND OTHER PROCEDURAL MATTERS**

Summary

The category of this case is confirmed as adjudication, and the assigned Administrative Law Judge (ALJ) will serve as presiding officer. The fundamental issue underlying the case is whether, during the period relevant to the complaint, the defendant's electric service tariff Schedule A-RTP complied with the legislated electric rate "freeze." (Pub. Util. Code § 368 (a).) Related or subsidiary issues, summarized in the parties' Joint Case Management Statement (October 6, 2000, updated on January 22, 2001) may need resolution, depending on the disposition of the defendant's pending motion to dismiss. The schedule for the proceeding also depends on how much of the case survives the motion to dismiss; accordingly, the schedule will be set only after disposition of the motion.

Background

This case has seen much activity but little progress. The principal developments are set forth below.

The Commission preliminarily categorized this case as adjudicatory and likely to require a hearing, and so subject to Pub. Util. Code § 1701.2. The matter initially was assigned to Commissioner Richard A. Bilas and ALJ Victor D. Ryerson. A prehearing conference (PHC) was held on September 19, 2000, with Commissioner Bilas and ALJ Ryerson co-presiding. With the aim of exploring settlement possibilities and/or narrowing the issues, a second PHC (preceded by filing of the original Joint Case Management Statement mentioned above) was held before ALJ Ryerson on October 16, 2000.

The parties indicated that mediation or other efforts at alternate dispute resolution did not appear promising. Meanwhile, the defendant had filed a motion to dismiss (September 19, 2000). On October 6, 2000, the complainant filed its opposition to the motion, and on October 16, the defendant replied to the opposition. This motion is still pending. The complainant also amended its complaint (December 6, 2000), and defendant's answer to the amended complaint duly followed (December 22, 2000).

ALJ Ryerson also held several conference calls with the parties. After various delays occasioned by requests from the parties due to illnesses, scheduling conflicts, etc., ALJ Ryerson established a discovery cutoff date. Three rounds of prepared testimony have been submitted, most recently, the complainant's rebuttal testimony (March 26, 2001).

During early 2001, everyone recognized that the case could not be resolved within 12 months of its filing, as contemplated by Pub. Util. Code § 1701.2 for adjudicatory matters that require a hearing. By letter dated March 9, 2001, counsel

for the defendant laid out the circumstances justifying extension of the deadline; she indicated that counsel for the complainant concurred in the request for extension. Consequently, the Commission issued Decision (D.) 01-05-018, extending the deadline for resolution of the case to May 22, 2002.

A few days before D.01-05-018, on April 6, 2001, the defendant filed its petition for reorganization under Chapter 11 of the federal Bankruptcy Code. We noted this filing in D.01-05-018 and stated our assumption that the defendant's filing would "not operate to stay this proceeding. . . as a matter of law." (*Id.* at page 2, note 1.) It is not clear whether the defendant shared that assumption; as far as the record discloses, the defendant did not then take steps either to have this matter adjudicated in the bankruptcy court (where the complainant filed a claim based at least in part on the violation alleged here) or to request that court to remand the complainant's claim for resolution by this Commission.

Recent Developments

Both the assigned Commissioner and assigned ALJ for this proceeding have changed. Commissioner Bilas has resigned from the Commission, and this case was reassigned on March 22, 2002, to Commissioner Geoffrey F. Brown. Due to exigencies in ALJ Ryerson's caseload, this case was reassigned from him to ALJ Steven Kotz on June 13, 2002.

ALJ Kotz held a conference call on July 18, 2002. Counsel for the defendant indicated that she planned within 30 days to file a motion at the bankruptcy court requesting, in essence, that the court remand this ratemaking dispute to the Commission. Counsel for the complainant indicated that it might join in the request. He was uncertain, however, about the scope of the complainant's claim in bankruptcy; should the scope be broader than the

violation alleged here, the complainant had hoped that a “global” settlement might be negotiated in the court venue.

Discussion

In light of the foregoing circumstances, there should be no further delay in issuing this scoping memo and procedural order. Our review of the pleadings confirms that this case should be treated as adjudicatory. ALJ Kotz is designated as presiding officer.

The need for hearing is presently unclear, depending chiefly on the disposition of the motion to dismiss. If determination of the legal issues raised by the motion results in dismissal of the entire case, no evidentiary hearing would be necessary; there would also be no need to issue an extension order, since the statutory 12-month deadline applies only to adjudicatory matters that go to hearing. Finally, a meaningful schedule can only be created after we have specified the issues (if any) that survive disposition of the motion to dismiss. We do anticipate disposition of that motion will occur before the end of the year. Consequently, further scheduling and scoping of issues is deferred at this time.

IT IS SO RULED.

Dated July 26, 2002, at San Francisco, California.

/s/ Geoffrey F. Brown
Geoffrey F. Brown
Assigned Commissioner

/s/ Steven K. Kotz
Steven Kotz, Assigned
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Joint Ruling on Scope of Proceeding and Other Procedural Matters on all parties of record in this proceeding or their attorneys of record.

Dated July 26, 2002, at San Francisco, California.

/s/ Antonina V. Swansen

Antonina V. Swansen

N O T I C E

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